HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT APPEAL NO.775 OF 2006

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Between:

Government of Andhra Pradesh, Health, Medical
and Family Welfare Department, Secretariat, Hyderabad
rep. by its Secretary
and others

…Appellants

A n d

T.Sreerama Murthy S/o late Ramadasu,
R/o D.No.64-9-14B, Pylamma Temple Street,
Achutapuram Gate, Kakinada,
East Godavari District.

…Respondent

:: **J U D G M E N T** ::

Counsel for appellants : Government Pleader for Medical and Health

Counsel for respondent : Sri O.Manohar Reddy for C.N.R.Jyothula

3rd August 2006

Per G.V.Seethapathy, J

Feeling aggrieved by order dated 23.12.2005 passed by the learned Single Judge in Writ Petition No.27475 of 2005, the Government of Andhra Pradesh and three others have preferred this appeal under Clause 15 of the Letters Patent.

The facts:

On an application made by respondent – Sri T.Srirama Murthy, who claims to have participated in the freedom struggle, Principal of Rangaraya Medical College, Kakinada, vide his order dated 19.5.2000, granted permission to him to establish a medical shop in the campus of medical college subject to the following conditions:

> "1. He should install the day and night medical stores in the inside premises of para-clinical campus south east corner of the D.R.D.A office compound wall and car parking shed of the Rangaraya Medical college, Kakinada measurement of medical shop 11'X16' facing Rajaramamohan Roy Road, Kakinada of Rangaraya Medical College, Kakinada (opposite to Government General Hospital, Kakinada).
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> 2. He should pay Rs.1,000/- (Rupees one thousand only) every month by way of demand draft in favour of Principal, Rangaraya Medical College, Kakinada towards rent for running day and night medical stores.
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> 3. He should bear all the expenses incurred in connection with the erection of "Day and Night Medical Stores" as requested by him.
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> 4.He should separate the electricity and telephone

charges if any pertaining to the "Day and Night Medical Stores" being run by him.

5.He should note that the permission now accorded is purely temporary and liable to cancellation at any time without assigning any reason."

After one month and three days, the Principal of the college cancelled the aforesaid permission. The respondent challenged the same in Writ Petition No.11228 of 2000, which was allowed by the learned Single Judge vide his order dated 16.9.2003 on the ground that the writ petitioner had not been noticed and he had not been given opportunity. Thereafter, District Collector, East Godavari at Kakinada (for short `the District Collector') issued notice dated 20.1.2004 to the respondent proposing cancellation of permission granted by the Principal. The respondent filed reply dated 11.2.2004. After one year and few months, he filed Writ Petition No.26000 of 2005 with the complaint that the matter was not being decided by the competent authority. That petition was disposed of on 16.12.2005 with the direction to the Principal of the college to pass appropriate order. Thereafter the Principal of the college passed order dated 19.12.2005, whereby he directed the respondent to remove the medical shop.

The respondent challenged the last mentioned order in Writ Petition No.27475 of 2005 mainly on the ground of violation of rules of natural justice. Learned Single Judge declined the respondent's prayer for being allowed to continue to occupy the site, but issued certain directions. The relevant extracts of the order of the learned Single Judge are reproduced below:

"It is true that the 4th respondent did not state any reasons, in support of his conclusion to evict the petitioner. However, as long as the right of the petitioner is not traceable to any statutory provision, this Court

cannot direct the continuance of the petitioner for indefinite period, particularly, when the site is required for expansion of the college building. Further, when the Government has taken a policy decision to grant the rights to establish medical shops in the Government Hospitals, through the process of auction, the petitioner cannot be conferred the benefit of unilateral allotment. The amount fetched in the auction is being utilized to improve the facilities in the hospitals".

However, while negativing the claim of the petitioner for continuance of the permission to run the medical shop in the light of the policy of the Government to allot medical shops in government hospitals through process of auction, the learned Single Judge issued the following directions:

"

(a) It shall be open to the respondents to grant or award the rights of establishing medical shop in the Rangaraya Medical College, Kakinada, or the attached Government Hospital opposite to it, by conducting public auction, and it shall be open to the petitioner to participate in the same.

(b) Till the grant of rights in favour of the successful tenderer or bidder is finalized, the petitioner shall be continued in the existing premises.

(c) In case, the premises in which the medical shop is being run, is immediately needed for expansion of the college building, the petitioner shall be provided with alternative site, till the steps indicated in clauses (a) and (b) are complied with".

We have heard learned counsel for the parties and perused the record. As per his own showing the respondent was 86 years old at the time of filing third writ petition. Whether at that ripe old age, the

petitioner was capable of establishing and running a medical shop is itself a doubtful proposition. Added to that, the affidavit filed in support of the petition is not furnished by the petitioner himself, but is sworn by one T.Nagendra Kumar, who claims to be the grandson of the petitioner. These two circumstances, cumulatively lead to a reasonable inference that though permission is obtained in the name of the petitioner claiming to be a freedom fighter, the shop is actually run by his grandson Sri T.Nagendra Kumar. The proceedings dated 19.5.2000 issued by the Principal do not disclose any reasons, which compelled grant of such permission to the petitioner to run the medical shop. Even assuming that the petitioner was a freedom fighter, the proceedings dated 19.5.2000 do not refer to any rule framed or scheme formulated either by the Central or the State Government, which entitles a freedom fighter to stake such a claim or enables the authorities to accord such permission to open a medical shop.

That apart, we find that neither the petitioner nor his grandson-the deponent, has got any licence issued under the provisions of Drugs and Cosmetics Act, 1940 (for short "the Act") to sell the drugs, which is mandatory. Section 18(c) of the Act reads thus:

> **"18.Prohibition of manufacture and sale of certain drugs and cosmetics-**
> (a) xxxxxxxxxxx
> (b) xxxxxxxxxxx
> (c) manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale,] or distribute any drug [or cosmetic], except under, and in accordance with the conditions of, a licence issued for such purpose under this Chapter":

The above provision contains a clear prohibition against sale or distribution of any drugs or cosmetics without a licence issued for such

purpose. The Act contemplates penal consequences in the event of violation of any of the provisions. Section 27(b)(ii) of the Act renders sale or distribution of any drug without a valid licence as required under clause (c) of Section 18, punishable with imprisonment and fine.

Since the respondent was not having licence for selling the drugs, the Principal of the college was not justified in granting permission to him to establish a medical shop in the campus. Therefore, even though the action taken for cancellation of the permission is shown to have been taken in violation of the rules of natural justice, we do not find any justification for exercise of jurisdiction of this Court under Article 226 of the Constitution of India for directing the concerned authority to allow the respondent to operate the medical shop in violation of mandatory statutory provision.

As per the policy of the Government contained in G.O.Ms.No.516, dated 14.10.2005, the licence for running the shops is to be accorded through open auction. In view of this policy, the Court cannot direct the appellants to allow the respondent to continue to occupy the shop or operate sale. Therefore, the compassionate concession given to him by the learned Single Judge cannot be upheld and the permission granted by the Principal on 19.5.2000 on misconceived notions and misplaced sympathies, though on a temporary basis and which permission was cancelled on 22.6.2000, cannot be revived even for a limited period or purpose.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside. Consequently, Writ Petition No.27475 of 2005 shall stand dismissed. However, the parties are left to bear their own costs.

As a sequel to disposal of the main appeal, W.A.M.P.No.1557 of 2006 filed by the appellants for grant of interim relief is disposed of as infructuous.

G.V.SEETHAPATHY, J

G.S.SINGHVI, C.J

03rd August 2006

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HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT APPEL NO.775 OF 2006

(Judgment of the Bench made by
Hon'ble Shri Justice G.V.Seethapathy)

DATED : 03.08.2006